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June 25, 2010

### **BY ELECTRONIC FILING**

The Honorable Rya W. Zobel  
United States District Judge  
U.S. District Court for the District of Massachusetts  
John Joseph Moakley U.S. Courthouse  
1 Courthouse Way – Suite 2300  
Boston, Massachusetts 02210

Re: **United States ex rel. Duxbury v. Ortho Biotech Products, L.P.,**  
**Civil No. 03-12189 (RWZ)**

Dear Judge Zobel:

Ortho Biotech Products, L.P. (“OBP”) respectfully informs the Court that, on June 21, 2010, the Supreme Court denied OBP’s petition for a writ of certiorari. Pursuant to this Court’s March 8, 2010 Order, the Court should accordingly lift the stay in this case.

OBP also respectfully requests that the Court grant OBP’s proposed order, filed on February 4, 2010. That proposed order would limit the scope of litigation on remand to Mark Duxbury’s “kickback” allegations concerning conduct purportedly occurring between November 6, 1997 and the date of his termination from OBP in mid-July 1998. As set forth in several prior memoranda,<sup>1</sup> the remaining “kickback” allegations of conduct purportedly occurring before November 6, 1997 are barred by the applicable six-year statute of limitations. And allegations about conduct purportedly occurring after Duxbury’s departure from OBP are barred by the public disclosure bar.

That leaves, at most, allegations only concerning the following five healthcare providers, subject to the qualifications set forth in OBP’s December 31, 2009 brief (at 7-9): St. Joseph’s Hospital in Tacoma, Washington; Rainier Oncology in Puyallup, Washington; Memorial Clinic in Olympia, Washington; Western Washington Cancer Treatment Center in Olympia, Washington; and Memorial Clinic Oncology Group in Washington.

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<sup>1</sup> OBP refers the Court to the parties’ briefs filed on December 31, 2009, January 18, 2010, and January 26, 2010, and also to the Court’s hearing on this matter held on February 4, 2010.

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Finally, while the Court should lift the stay on this case, OBP respectfully requests that the scheduling order for discovery, adopted by the Court on February 4, 2010, remain in abeyance until replaced by a revised scheduling order, which the parties should propose to the Court at a later date. As a result of the temporary stay currently in effect, several deadlines in the February 4 order have already passed. The Court will thus need a revised scheduling order. Before adopting a new scheduling order, however, the Court should first determine the scope of litigation on remand. Once the scope of litigation on remand is set, the parties can then confer and propose to the Court a new scheduling order that reasonably accommodates the scope of the case.

Sincerely,

A handwritten signature in black ink, reading "Ethan M. Posner". The signature is fluid and cursive, with the first name "Ethan" being the most prominent part.

Ethan M. Posner

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above letter from Ethan M. Posner to The Honorable Rya W. Zobel, dated June 25, 2010, was served upon the following attorneys by Electronic Case Filing and/or by First Class Mail on June 25, 2010:

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